

SERVED: January 13, 2000

NTSB Order No. EA-4812

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 5th day of January, 2000

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-15152
v.	)	
	)	
BRIAN W. KRAFT,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

The Administrator appeals the order of Administrative Law Judge William R. Mullins granting respondent's motion for judgment on the pleadings. By that order, the law judge found that selective admissions made by respondent supported the Administrator's allegation that he lacked qualification to hold an airman certificate and affirmed

the order of revocation.<sup>1</sup> We deny the appeal.

The Administrator's complaint, generally, describes respondent's operation of N2743J, a Cessna 185 equipped with floats, during, for the most part, the spring and summer of 1997.<sup>2</sup> Respondent admits that, as co-owner with his father of Kraft Adventures, Inc., the aircraft's corporate owner, he was the principal operator of the aircraft and primarily responsible for ensuring that it was adequately maintained. He admits that required maintenance record entries were not made, and that he flew the aircraft when required inspections had not been performed. He admits that although he held only a private pilot certificate he nonetheless served as pilot-in-command aboard the aircraft on numerous flights for compensation or hire. He admits that the aircraft crashed on August 26, 1997. He admits he violated FAR sections 61.118, 91.405(a), 91.405(b), 91.407(a)(1), 91.409(a), 91.417(a)(2), and 119.5(g). And, although he denies portions of the Administrator's amended complaint,<sup>3</sup> he

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<sup>1</sup> Copies of the law judge's July 1, 1998 Order Granting Motion for Judgment on the Pleadings and July 15, 1998 Order Denying Motion for Reconsideration are attached.

<sup>2</sup> Respondent admitted paragraphs 1, 2, 6, 7, 9, 13, 14, 15, 19, 20, 21, 22, 23, 25, 26 and 28 of the Administrator's amended complaint. The Administrator's amended complaint, as well as the text of the relevant portions of the applicable FARs, is appended to this opinion and order.

<sup>3</sup> In addition to denying other factual allegations in the Administrator's complaint -- specifically paragraphs 3, 4,  
(continued . . .)

"agrees with the proposed revocation of his [airman certificate] for a period of one year, effective January 22, 1998."<sup>4</sup> Respondent's Amended Answer.

After answering the Administrator's complaint, respondent moved for judgment on the pleadings, arguing that a "hearing . . . would be unnecessary and senseless in light of the fact that [he had] already agreed to the maximum sanction which can be imposed[.]" The Administrator opposed the motion, arguing that "[e]ven though the resolution of the matters that respondent has denied could not have any effect on sanction, they are not moot."

The law judge, noting that "the admissions made by

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(continued . . .)

5, 8, 10, 11, 12, 16, 17, 18, 24, 27, and 29 -- respondent denies violating FAR sections 43.12(a), 91.7(a), 91.13(a), 91.407(a)(2), and 91.417(a)(1).

<sup>4</sup> Respondent describes the revocation of respondent's certificate as being limited to a "maximum" one-year duration. A more accurate characterization is that, having admitted that he lacks qualification and surrendered his certificate on January 22, 1998, respondent may apply for a new airman certificate, but any application will require a determination by the Administrator that he qualifies before one will be issued. 49 U.S.C. § 44703(a); see also 49 U.S.C. § 44703(c)(1)(B) (an "individual whose application for the issuance or renewal of an airman certificate has been denied may appeal the denial to the National Transportation Safety Board, except if the individual holds a certificate that was revoked within one year from the date of denial"). In other words, the Administrator is free to determine, beyond a year from revocation, that an airman still does not qualify for a certificate. Such a determination, however, could be appealed to the Board.

respondent support the allegation of the Administrator that respondent lacks the care, judgment, responsibility to hold his airman certificate," granted respondent's motion for judgment on the pleadings. The law judge subsequently clarified, in an order denying the Administrator's motion for reconsideration, that he "did not dismiss the allegations not admitted but did find that since the sanction [sought to be imposed, i.e. revocation,] had been affirmed, these allegations were moot."

On appeal, the Administrator argues that the law judge "erred in finding that the allegations not admitted . . . were mooted by respondent's admission to select violations and acceptance of the sanction of revocation[.]" In addition to providing a recitation of the mootness doctrine, the Administrator elaborates upon the arguments she raised before the law judge, namely, her interest in maintaining accurate records of an airman's violation history.<sup>5</sup> Respondent argues that the purpose of an administrative enforcement proceeding is not to determine the validity of every allegation of impropriety but,

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<sup>5</sup> The Administrator also argues that granting respondent's motion and terminating the proceedings violated the provisions of section 44709(d), Title 49, of the United States Code because it constitutes a modification by the Board of the Administrator's order "without the required [preceding] opportunity for a hearing." This argument has no merit in light of the procedural context of this case for, as we explain, *infra*, the Board has not "amended, modified, or reversed" the Administrator's order.

rather, to determine if an airman possesses the care, judgment, and responsibility to hold an airman's certificate.

The law judge appears to have evoked unintended concern with his use of the term "moot," which we construe to have meant merely that litigation of the unadmitted allegations in the complaint was unnecessary given the agreement to the ultimate sanction available to the Administrator. As we see it, respondent's admission to only portions of the Administrator's order of revocation did not affect her ability to consider, when assessing respondent's violation history at some future time, the allegations he denied but chose not to litigate.<sup>6</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is denied; and
2. The law judge's orders, to the extent they are consistent with this opinion and order, are affirmed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>6</sup> We do not share the Administrator's concern that her duties under the Pilot Records Improvement Act of 1996 obligate her to litigate the unappealed allegations in her order. The Act speaks of "summaries of legal enforcement actions resulting in a finding by the Administrator of a violation . . . or order issued . . . that was not subsequently overturned." 49 U.S.C. § 44936(f)(1)(A)(ii) (emphasis added). The Administrator's undisturbed judgment that an allegation, which an airman chose not to contest by adjudication at the Board, amounted to a regulatory violation would appear to qualify as a finding that "was not subsequently overturned."

